



Court File No. **VLC-S-S-229506**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1351486 B.C. LTD.

PETITIONER

AND:

LIVING BEACHSIDE DEVELOPMENT LIMITED
PARTNERSHIP, SUNNY BEACH MOTEL INC., PORT
CAPITAL FARMS (BEACH) INC., PORTLIVING FARMS
(3624 PARKVIEW) INVESTMENTS INC., PORTLIVING
FARMS (3688 PARKVIEW) INVESTMENTS INC.,
PORTLIVING (3648 PARKVIEW) INVESTMENTS INC., PORT
CAPITAL GROUP INC., PORTLIVING PROPERTIES INC.,
MACARIO TEODORO REYES, PORT CAPITAL
DEVELOPMENT (FARMS) INC., and 1351550 B.C. LTD.

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

**LIVING BEACHSIDE DEVELOPMENT
LIMITED PARTNERSHIP**

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

SUNNY BEACH MOTEL INC.

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

PORT CAPITAL FARMS (BEACH) INC.

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

**PORTLIVING FARMS (3624 PARKVIEW)
INVESTMENTS INC.**

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

**PORTLIVING FARMS (3648 PARKVIEW)
INVESTMENTS INC.**

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

**PORTLIVING FARMS (3688 PARKVIEW)
INVESTMENTS INC.**

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

PORT CAPITAL GROUP INC.

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

PORTLIVING PROPERTIES INC.

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

MACARIO TEODORO REYES

325 West 4th Avenue
Vancouver, BC V5Y 1H3

**PORT CAPITAL DEVELOPMENT
(FARMS) INC.**

20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

1351550 B.C. LTD.
102 – 13226 Kelly Avenue
Summerland, BC V0H 1Z0

BRIDGEHOUSE LAW LLP
9th Floor, 900 West Hastings Street
Vancouver, BC V6C 1E5

Attention: Ritchie Clark, K.C.

This proceeding is brought for the relief set out in Part 1 below, by the Petitioner, 1351486 B.C. LTD. (the “**Petitioner**” or “**486**”).

If you intend to respond to this Petition, you or your lawyer must

1. file a Response to Petition in Form 67 in the above-named registry of this Court within the time for Response to Petition described below, and
2. serve on the Petitioner
 - (a) 2 copies of the filed Response to Petition, and
 - (b) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response to Petition

A Response to Petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by Order of the Court, within that time.

(1)	The address of the registry is: 800 Smithe Street, Vancouver, B.C., V6Z 2E1
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<p>(2)</p>	<p>The ADDRESS FOR DELIVERY is:</p> <p>Fasken Martineau DuMoulin LLP 2900 - 550 Burrard Street Vancouver, B.C. V6C 0A3</p> <p>Fax number for delivery is: n/a E-mail address for service is: n/a</p>
<p>(3)</p>	<p>The name and office address of the Petitioner's Solicitor is:</p> <p>Fasken Martineau DuMoulin LLP 2900 - 550 Burrard Street Vancouver, B.C. V6C 0A3 Telephone: 604 631 3131. (Reference 319671.00003/Kibben Jackson)</p>

CLAIM OF THE PETITIONER

Part 1: DECLARATIONS AND ORDERS SOUGHT

1. A Declaration that the indenture of mortgage and assignment of rents dated March 10, 2022 granted by the Respondents PortLiving Farms (3624 Parkview) Investments Inc. ("**3624**"), PortLiving Farms (3688 Parkview) Investments Inc. ("**3688**"), and PortLiving (3648 Parkview) Investments Inc. ("**3648**" and together with 3624 and 3688, the "**Mortgagors**"), as mortgagors, in favour of 486, as mortgagee, and registered in the New Westminster Land Title Office under charge numbers CA9786318 and CA9786319 (the "**486 Mortgage**") is a mortgage charging those certain lands and premises located in Penticton, B.C. and having the civic addresses and legal descriptions set out in Schedule "A" hereto (the "**Parkview Lands**") in priority to the interests therein or claims thereto of all Respondents except 1351550 B.C. Ltd. ("**550**");
2. A Declaration that the general security agreement dated March 10, 2022 granted by Living Beachside Development Limited Partnership ("**Beachside LP**"), Sunny Beach Motel Inc. ("**Sunny Beach**"), Port Capital Farms (Beach) Inc. ("**Farms (Beach)**"), 3624, 3688 and 3648 (collectively, the "**Borrowers**") in favour of 486 (the "**GSA**"), in respect of which a financing statement was filed in the Personal Property Registry of British Columbia (the "**PPR**") under base registration number 588934N, constitutes a charge in favour of the

Petitioner on all present and after acquired property of the Borrowers in priority to the interests therein or claims thereto of all Respondents except 550;

3. A Declaration that the pledges of securities (collectively, the “**Pledges of Securities**”) listed in Schedule “B” and executed by PortLiving Properties Inc. (“**Port Properties**”), Port Capital Development (Farms) Inc. (the “**Limited Recourse Guarantor**”) and Beachside LP (collectively, the “**Pledgors**”), in favour of 486 and in respect of which a financing statement was filed in the PPR under base registration number 589010N constitutes a charge in favour of the Petitioner on the shares that are the subject of the Pledges of Securities in priority to the interests therein or claims thereto of all Respondents;
4. A Declaration that the amounts owing to 486 by the Borrowers and secured under the Mortgage, the GSA, the Pledges of Securities and the additional security agreements enumerated in Schedule “C” hereto (collectively, the “**Additional Security Agreements**”) are due and owing;
5. A Declaration that the amount of money required to redeem the assets that are charged by the Security (the “**Property**”) is the sum of \$4,049,848.32, together with interest accruing thereon at the rate of 24.5%/annum or \$2,694.88 per day from November 29, 2022 to the date of payment, and together with the Petitioner’s costs of and related to this proceeding (the “**Indebtedness**”);
6. Judgment against the Borrowers in the amount of \$4,049,848.32 together with interest accruing thereon at the rate of 24.5%/annum or \$2,694.88 per day from November 29, 2022 to the date of payment, and together with the Petitioner’s costs of and related to this proceeding;
7. Judgment against Port Capital Group Inc. (“**Port Capital**”), Port Properties and Macario Teodoro Reyes (“**Reyes**”, and together with Port Capital and Port Properties, the “**Guarantors**”) jointly and severally pursuant to the Guarantee (as defined herein) in the amount of the Indebtedness;

8. Judgment against the Limited Recourse Guarantor pursuant to the Limited Recourse Guarantee (as defined herein) in the amount of the Indebtedness;
9. An order, substantially in the form set out in Schedule "D" hereto, appointing The Bowra Group Inc. as receiver and manager, without security, of the Property pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "*BIA*"), and section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 (the "*LEA*") or in such other form as this Honourable Court may order;
10. An order that the Petitioner shall be indemnified by the Borrowers for all of its legal costs and disbursements arising from this proceeding;
11. Costs of this action on a solicitor and own client basis or, alternatively, on such basis as this Honourable Court may deem just;
12. An order that the Petitioner be granted liberty to apply to this Honourable Court or to the District Registrar of this Honourable Court for a further summary accounting of any amounts which become due to the Petitioner for interest, taxes, arrears of taxes, insurance premiums, costs, charges, expenses or otherwise after the pronouncement of any order made herein; and
13. Such further relief as the circumstances may require and as this Honourable Court deems appropriate.

Part 2: FACTUAL BASIS

The Parties and Background

14. The Petitioner is a company incorporated pursuant to the laws of British Columbia.
15. The corporate Respondents are companies incorporated pursuant to the laws of British Columbia.
16. The Respondent Beachside LP is a B.C. limited partnership whose general partner is Farms (Beach).

17. The Respondent Reyes is a businessperson who resides in Vancouver, B.C. and is the director of Sunny Beach, Farms (Beach), 3624, 3688, 3648, Port Properties, the Limited Recourse Guarantor and Port Capital.
18. The Mortgagors are the registered owners, and Beachside LP and Sunny Beach are the beneficial owners, of the Parkview Lands on which are three motels operated by Beachside LP.
19. By loan agreement dated March 14, 2022 (the “**Loan Agreement**”), between the Petitioner, as lender, and the Borrowers, as borrowers, the Petitioner advanced to the Borrowers a non-revolving term loan in the principal amount of \$3,500,000 (the “**Loan**”). The Loan Agreement was made to assist the Borrowers with the refinancing of existing obligations secured against the Property.
20. By written guarantee dated March 10, 2022 (the “**Guarantee**”), the Guarantors executed a guarantee in favour of 486 jointly and severally guaranteeing all obligations of the Borrowers to the Petitioner.
21. By written guarantee dated March 10, 2022 (the “**Limited Recourse Guarantee**”), the Limited Recourse Guarantor executed a guarantee in favour of 486 guaranteeing all obligations of the Borrowers to the Petitioner.
22. As security for the Borrowers’ obligations to 486, the Borrowers and Guarantors granted certain security in favour of the Petitioner, including the Additional Security Agreements enumerated in Schedule “C” hereto, and including:
 - (a) the 486 Mortgage;
 - (b) the GSA; and
 - (c) the Pledges of Securities.
23. By priority agreement dated for reference March 10, 2022, 486 subordinated its security interests in the Parkview Lands and the personal property charged by the GSA to the security interests therein granted by the Borrowers in favour of 550.

24. On May 2, 2022, the Borrowers paid \$20,000 to the Petitioner on account of the Loan. They have not made another payment since that date.
25. By letters dated June 3, 2022 enclosing Notices of Intention to Enforce Security, the Petitioner made demand on the Borrowers and the Guarantors for payment of all amounts owing to the Petitioners as of that date plus six months' interest in accordance with section 14.1 of the Loan Agreement.
26. By letters dated September 9 and 26, 2022, the Petitioner notified the Borrowers, the Guarantors, and the Limited Recourse Guarantor of its intention to bring an application to the court for the appointment of a receiver over the Property unless it received payment in full of the amount owing to the Petitioner under the Loan Agreement.
27. On October 25, 2022, the Petitioner and the Respondents entered into a forbearance agreement (the "**Forbearance Agreement**") under which the Petitioner agreed to forbear from further enforcement action until after November 16, 2022. In consideration of this forbearance, the Respondents were to pay the Petitioner a forbearance fee of \$175,000 (the "**Forbearance Fee**"), half of which was payable on November 1, 2022 and the other half on November 9, 2022.
28. The Respondents delivered a cheque for \$87,500 to the Petitioner on November 1, 2022 but this cheque was not honoured when presented for payment. The Respondents then delivered a second cheque to the Petitioner on November 9, 2022 which cheque was deposited successfully leaving half of the Forbearance Fee outstanding.

The Secured Indebtedness

29. As at November 29, 2022, the Borrowers were indebted to the Petitioner in the amount of \$4,049,848.32, exclusive of legal and other costs. Interest continues to accrue on the foregoing amount at the rate of 24.5%/annum or \$2,694.88 per day, subject to the compounding provisions of the Loan Agreement.

The Defaults

30. The Debtors are in default of their obligations to the Petitioner, including by virtue of failing to make payments under the Loan Agreement, the Guarantee and the Limited Recourse Guarantee when due.
31. The Petitioner has twice made demand on the Debtors to pay the Indebtedness, but the Debtors have failed to do so.

Need for Receivership Order

32. The summer season is the most profitable for the motels on the Parkview Lands - in June, Beachside LP had net income of \$93,736 and this number rose to \$264,370 in July - yet 486 received no payments during that time (or since).
33. 486 is also concerned the Debtors are not meeting their other obligations such as income taxes, source deductions, and property taxes on the motels. 486 has been denied access to recent bank statements or reconciliations that would demonstrate the Debtors are using their profit to meet their current liabilities.
34. 486 has seen Property Tax Certificates for the Parkview Lands obtained on October 3, 2022. These certificates show over \$70,000 owing in property taxes which includes about \$7,000 of penalties.
35. The Respondents have not made the September and October monthly instalments owing to their first-ranking secured creditor, 550. By letter dated October 3, 2022 enclosing a Notice of Intention to Enforce Security, 550 made demand on all other Respondents, except the Limited Recourse Guarantor and Sunny Beach, for payment of the entire amount owing under its security, being \$6,110,000.
36. The Respondents delivered a cheque to the Petitioner that had insufficient funds to cash.

Consent of Licensed Trustee in Bankruptcy to Act as Receiver

37. The Bowra Group Inc., a trustee within the meaning of section 2 of the *BIA*, is qualified to act as receiver and manager of the Property, has consented and agreed to act as such and is acceptable to the Petitioner.

Part 3:LEGAL BASIS

38. The Petitioner relies on:
- (d) Rules 1-3, 2-1, 10-2, 13-5, 14-1, 16-1, 21-7 and 22-1 of the *Supreme Court Civil Rules*;
 - (e) the *BIA*, section 243;
 - (f) the *Personal Property Security Act*, RSBC 1996, c 359, section 64;
 - (g) the *LEA*, section 39; and
 - (h) such other legal basis as counsel may advise.
39. The Petitioner applies for an order appointing The Bowra Group Inc. as the receiver and manager of the Property.
40. The Petitioner is a secured creditor of each of the Borrowers, including pursuant to the 486 Mortgage, the GSA and the Pledges of Securities. The Petitioner's interests in the Property rank ahead of the interests of all other persons in the Property, with the exception of 550's interests in the Parkview Lands and the assets charged by the GSA.
41. The overarching consideration of the court on an application to appoint a receiver is whether it is just and convenient in all of the circumstances.
- Cascade Divide Enterprises Inc. v. Laliberte*, 2013 BCSC 263;
Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527.
42. The appointment of a receiver of the Property is appropriate in the circumstances of this case.
43. There are a number of factors that may figure in the determination of whether it is appropriate to appoint a receiver:

- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties;
- (p) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527, at para. 25;
Textron Financial Canada Limited v. Chetwynd Motels Ltd., 2010 BCSC 477, at para. 40.

44. On the whole, the factors favour the granting of a receivership order.

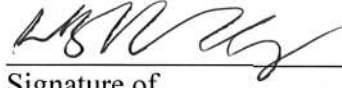
45. The GSA and the 486 Mortgage provide for the appointment of a receiver over the Property upon an event of default by the Borrowers.
46. Less than 1% of what is owed on the loan has been paid by the Borrowers.
47. There is a risk of irreparable harm to the Petitioner given that the Borrowers' assets include operating motels on the Parkview Lands. The Borrowers have been operating those motels, while making no payments to the Petitioner. This is despite the fact that the busiest season for motels (June to August) has just passed and the motels turned a profit of upwards of \$260,000 in July alone. 486 has seen none of this profit.
48. The Petitioner requires the appointment of a receiver to ensure those operating assets are safeguarded and managed responsibly pending the sale of the Property.
49. The Petitioner also suspects that the Borrowers have not been paying their other obligations from the summer profits (demonstrated by the overdue property taxes and demand from 550), especially concerning as the motels will likely only break even over the rest of year.
50. A receivership will result in additional costs, however, a receivership will also ensure timely sales of the Parkview Lands. Given that the monthly interest burn under the Petitioner's mortgage is approximately \$60,000, and there is an additional interest burn under the first mortgage at a rate of \$2,136.99/diem and with over \$400,000 currently owing, any additional costs resulting from a receivership will be more than offset by the sales of the Parkview Lands faster than could be accomplished by way of an ordinary foreclosure process.
51. In the circumstances, the overall balance of convenience favours the appointment of a receiver of the Property.

Part 4: MATERIAL TO BE RELIED ON

52. Affidavit #2 of Luke Pretty, sworn November 29, 2022;
53. Consent to Act, The Bowra Group Inc.; and
54. Such further and other material as counsel may advise and this court deems admissible.

The Petitioner estimates that the hearing of the application will take 30 minutes.

Dated: 29-Nov-2022



Signature of
 Lawyer for Petitioner

for: Kibben Jackson

Schedule A

Parkview Lands

3624 Parkview Street, Penticton, BC

PID(s):	Legal Description(s):
012-474-983	Lot 1 Block 212 District Lot 189 Similkameen Division Yale District Plan 397 except Plan 40551

3648 Parkview Street, Penticton, BC

PID(s):	Legal Description(s):
011-610-263	Lot A District Lot 189 Similkameen Division Yale District Plan 1389

3688 Parkview Street, Penticton, BC

PID(s):	Legal Description(s):
008-974-462	Lot 1 District Lot 189 Similkameen Division Yale District Plan 14620

Schedule B

Pledges of Securities

1. Pledge of Shares (in Sunny Beach Motel Inc.)
 - (a) Pledge of Securities – 3624/3688 Beneficial Owner
2. Pledge of Shares (in Port Capital Farms (Beach) Inc.)
 - (a) Pledge of Securities – Port Capital Development
3. Pledge of Shares (in PortLiving Farms (3624 Parkview) Investments Inc.)
 - (a) Pledge of Securities – 3624/3688 Beneficial Owner
4. Pledge of Shares (in PortLiving Farms (3648 Parkview) Investments Inc.)
 - (a) Pledge of Securities – 3624/3688 Beneficial Owner
5. Pledge of Shares (in PortLiving Farms (3688 Parkview) Investments Inc.)
 - (a) Pledge of Securities – 3624/3688 Beneficial Owner
6. Pledge of Shares (in Port Capital Development (Farms) Inc.)
 - (a) Pledge of Securities – Port Properties

Schedule C

Additional Security Agreements

1. Beneficial mortgage and direction to charge from 3624 and Beachside LP with respect to the 3624 Lands
2. Beneficial mortgage and direction to charge from 3648 and Sunny Beach with respect to the 3648 Lands
3. Beneficial mortgage and direction to charge from 3688 and Beachside LP with respect to the 3688 Lands
4. General assignment of material contracts, plans and permits from the Borrowers
5. Negative pledge agreement from the Borrowers, Port Capital, Port Properties and the Individual Guarantor
6. Indemnity agreement from the Borrowers, Port Capital, Port Properties and the Individual Guarantor
7. Assignment of insurance from the Borrowers with respect to the Lands
8. Assignment and postponement of claims from Port Capital, Port Properties, the Individual Guarantor and the Limited Recourse Guarantor

Schedule D

Draft Form Of Order

IN THE SUPREME COURT OF BRITISH COLUMBIA

1351486 B.C. LTD.

Petitioner

- and -

LIVING BEACHSIDE DEVELOPMENT LIMITED
PARTNERSHIP, SUNNY BEACH MOTEL INC., PORT
CAPITAL FARMS (BEACH) INC., PORTLIVING FARMS
(3624 PARKVIEW) INVESTMENTS INC., PORTLIVING
FARMS (3688 PARKVIEW) INVESTMENTS INC.,
PORTLIVING (3648 PARKVIEW) INVESTMENTS INC.,
PORT CAPITAL GROUP INC., PORTLIVING PROPERTIES
INC., MACARIO TEODORO REYES, PORT CAPITAL
DEVELOPMENT (FARMS) INC., and 1351550 B.C. LTD.

Respondents

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)

[REDACTED] JUSTICE [REDACTED])

)
)
)
)

[REDACTED]/NOVEMBER/2022

ON THE APPLICATION of 1351486 B.C. LTD. (the “**Petitioner**” or “**486**”) for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the “**LEA**”) appointing The Bowra Group Inc. as receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and property of Living Beachside Development Limited Partnership, Sunny Beach Motel Inc., Port Capital Farms (Beach) Inc., Portliving Farms (3624 Parkview) Investments Inc, Portliving Farms (3688 Parkview) Investments Inc., and Portliving (3648 Parkview) Investments Inc. (collectively, the “**Borrower**”), and certain assets of the Respondents PortLiving Properties Inc. and Port Capital Development (Farms) Inc. (together with Beachside LP, the “**Pledgors**” and, together with the Borrower, the “**Debtor**”), coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Luke Pretty sworn November 29, 2022 and the consent of The Bowra Group Inc. to act as the Receiver; AND ON HEARING Kibben Jackson, counsel

for the Petitioner and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. Pursuant to Section 243(1) of the BIA, and Section 39 of the LEA, The Bowra Group Inc. is appointed Receiver, without security, of all of the assets, undertakings and property of the Borrower and of the shares that are the subject of the pledges of securities of the Pledgors listed in Schedule "C" to the Petition filed herein, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
 - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
 - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
 - (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of a single transaction for consideration up to \$10,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records

without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

NO INTERFERENCE WITH THE RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

13. Subject to the employees' right to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

PERSONAL INFORMATION

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable

individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
16. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
17. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver’s appointment; or,
 - (b) after the Receiver’s appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver’s gross negligence or wilful misconduct.
18. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER’S LIABILITY

19. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except:
- (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
21. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

23. The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
25. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
26. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

ALLOCATION

27. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

SERVICE AND NOTICE OF MATERIALS

28. The Receiver shall establish and maintain a website in respect of these proceedings at: [WEB ADDRESS] (the "**Website**") and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
29. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
30. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
31. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials

to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.

32. Notwithstanding paragraph 31 of this Order, service of the Petition [OR the Notice of Application] and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
33. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

GENERAL

34. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
35. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
36. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
37. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
38. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
39. The [Plaintiff/Applicant] shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the [Plaintiff/Applicant]'s security or,

if not so provided by the [Plaintiff/Applicant]'s security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

40. Endorsement of this Order by counsel appearing on this application other than the [Plaintiff/Applicant] is dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

Signature of Kibben Jackson
lawyer for 1351486 B.C. LTD.

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that The Bowra Group Inc., the Receiver and Manager (the "**Receiver**") of all of the assets, undertakings and properties of Living Beachside Development Limited Partnership, Sunny Beach Motel Inc., Port Capital Farms (Beach) Inc., PortLiving Farms (3624 Parkview) Investments Inc, Portliving Farms (3688 Parkview) Investments Inc., and Portliving (3648 Parkview) Investments Inc., and of the shares that are the subject of the pledges of securities of PortLiving Properties Inc. and Port Capital Development (Farms) Inc. listed in Schedule "C" to the Petition filed herein, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "**Court**") dated the _____ day of _____, 2022 (the "**Order**") made in SCBC Action No. _____ has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _____.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the [REDACTED] day of [REDACTED], 2022.

The Bowra Group Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:
Name:
Title:

Schedule "B"

Demand for Notice

TO: [Name of Applicant]
c/o [Name of Counsel to the Applicant]
Attention:
Email:

AND TO: [Name of Receiver]
c/o [Name of Counsel to the Receiver]
Attention:
Email:

Re: In the matter of the Receivership of [DEBTOR]

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

- 1. By email, at the following address (or addresses):

OR

- 2. By facsimile, at the following facsimile number (or numbers):

OR

- 3. By mail, at the following address:

Name of Creditor: _____

Name of Counsel (if any): _____

Creditor's Contact Address: _____

Creditor's Contact Phone Number: _____

Action No. [REDACTED]

IN THE SUPREME COURT OF BRITISH
COLUMBIA

BETWEEN:

1351486 B.C. LTD.

Petitioner

- and -

**LIVING BEACHSIDE DEVELOPMENT
LIMITED PARTNERSHIP, SUNNY BEACH
MOTEL INC., PORT CAPITAL FARMS
(BEACH) INC., PORTLIVING FARMS (3624
PARKVIEW) INVESTMENTS INC.,
PORTLIVING FARMS (3688 PARKVIEW)
INVESTMENTS INC., PORTLIVING (3648
PARKVIEW) INVESTMENTS INC., PORT
CAPITAL GROUP INC., PORTLIVING
PROPERTIES INC., MACARIO TEODORO
REYES, PORT CAPITAL DEVELOPMENT
(FARMS) INC., and 1351550 B.C. LTD.**

Respondents

ORDER MADE AFTER APPLICATION

FASKEN MARTINEAU DuMOULIN LLP

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+1 604 631 3131

Counsel: Kibben Jackson

Matter No: 319671.00003